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any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(ii) Includes those incidents that have resulted in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of \$5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(1) The payment of a monetary fine or penalty of \$5,000 or more; or

(2) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(D) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (a)(ii)(A), (a)(ii)

(B), or (a)(ii)(C).

(E) In a DoD investigation of the Contractor or its subcontractors at any tier not subject to the jurisdiction of the U.S. courts, a final determination by the Secretary of Defense of Contractor or subcontractor fault (see DFARS 216.405-2-70).

Serious bodily injury means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor's or its subcontractor's actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.

(End of clause)

[76 FR 57677, Sept. 16, 2011]

252.216-7005 Award Fee.

As prescribed in 216.406(e)(2), insert the following clause:

Award Fee (FEB 2011)

The Contractor may earn award fee from a minimum of zero dollars to the maximum amount stated in the award-fee plan in this contract. In no event will award fee be paid to the Contractor for any evaluation period in which the Government rates the Contractor's overall cost, schedule, and technical performance below satisfactory. The Contracting Officer may unilaterally revise the award-fee plan prior to the beginning of any rating period in order to redirect contractor emphasis.

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(End of clause)

[76 FR 8305, Feb. 14, 2011]

252.216-7006 Ordering.

As prescribed in 216.506(a), use the following clause:

Ordering (MAY 2011)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the contract schedule. Such orders may be issued from _____ through _____ [insert dates].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c)(1) If issued electronically, the order is considered "issued" when a copy has been posted to the Electronic Document Access system, and notice has been sent to the Contractor.

(2) If mailed or transmitted by facsimile, a delivery order or task order is considered "issued" when the Government deposits the order in the mail or transmits by facsimile. Mailing includes transmittal by U.S. mail or private delivery services.

(3) Orders may be issued orally only if authorized in the schedule.

(End of clause)

[76 FR 25568, May 5, 2011]

252.216-7007 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products—representation.

As prescribed in 216.203-4-70(a)(2), use the following provision:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS—REPRESENTATION (MAR 2012)

(a) *Definitions.* The terms "established price" and "unit price," as used in this provision, have the meaning given in the clause 252.216-7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(b) By submission of its offer, the offeror represents that the unit price stated in this offer for _____ (Identify the item) is not in excess of the offeror's established price in effect on the date set for opening of bids (or the contract date if this is to be a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade

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discounts offered by the offeror from its catalog, list, or schedule price.

(End of provision)

[77 FR 19131, Mar. 30, 2012]

252.216-7008 Economic price adjustment—wage rates or material prices controlled by a foreign government—representation.

As prescribed in 216.203-4-70(c)(2), use the following provision:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT—REPRESENTATION (MAR 2012)

(a) By submission of its offer, the offeror represents that the prices set forth in this offer—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of _____ (*Offeror insert name of host country*), and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(End of provision)

[77 FR 19131, Mar. 30, 2012]

252.217-7000 Exercise of option to fulfill foreign military sales commitments.

As prescribed in 217.208-70(a), use the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (DEC 1991)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) The foreign military sales commitments are for:

(Insert name of country, or To Be Determined)

(Insert applicable CLIN)

(End of clause)

Alternate I (DEC 1991). As prescribed in 217.208-70(a)(1), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales. Failure to agree on an equitable adjustment shall be treated as a dis-

pute under the Disputes clause of this contract.

252.217-7001 Surge option.

As prescribed in 217.208-70(b), use the following clause:

SURGE OPTION (AUG 1992)

(a) *General.* The Government has the option to—

(1) Increase the quantity of supplies or services called for under this contract by no more than _____ percent; and/or

(2) Accelerate the rate of delivery called for under this contract, at a price or cost established before contract award or to be established by negotiation as provided in this clause.

(b) *Schedule.* (1) When the Production Surge Plan (DI-MGMT-80969) is included in the contract, the option delivery schedule shall be the production rate provided with the Plan. If the Plan was negotiated before contract award, then the negotiated schedule shall be used.

(2) If there is no Production Surge Plan in the contract, the Contractor shall, within 30 days from the date of award, furnish the Contracting Officer a delivery schedule showing the maximum sustainable rate of delivery for items in this contract. This delivery schedule shall provide acceleration by month up to the maximum sustainable rate of delivery achievable within the Contractor's existing facilities, equipment, and subcontracting structure.

(3) The Contractor shall not revise the option delivery schedule without approval from the Contracting Officer.

(c) *Exercise of option.* (1) The Contracting Officer may exercise this option at any time before acceptance by the Government of the final scheduled delivery.

(2) The Contracting Officer will provide a preliminary oral or written notice to the Contractor stating the quantities to be added or accelerated under the terms of this clause, followed by a contract modification incorporating the transmitted information and instructions. The notice and modification will establish a not-to-exceed price equal to the highest contract unit price or cost of the added or accelerated items as of the date of the notice.

(3) The Contractor will not be required to deliver at a rate greater than the maximum sustainable delivery rate under paragraph (b)(2) of this clause, nor will the exercise of this option extend delivery more than 24 months beyond the scheduled final delivery.

(d) *Price negotiation.* (1) Unless the option cost or price was previously agreed upon, the Contractor shall, within 30 days from the